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5

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,824	03/15/2002	Charles L. Wallace	PURIT:60555	4079
24201	7590	11/03/2004	EXAMINER	
FULWIDER PATTON LEE & UTECHT, LLP			NGUYEN, LE V	
HOWARD HUGHES CENTER			ART UNIT	
6060 CENTER DRIVE			PAPER NUMBER	
TENTH FLOOR			2174	
LOS ANGELES, CA 90045			DATE MAILED: 11/03/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

88

**Office Action Summary****Application No.**

10/099,824

**Applicant(s)**

WALLACE ET AL.

**Examiner**

Le Nguyen

**Art Unit**

2174

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 5 and 6 are rejected under 35 U.S.C. 102(e) as being anticipated by Gilmore et al. ("Gilmore").

As per claim 1, Gilmore teaches a ventilator system for ventilating a patient, comprising:

a respirator for ventilating the patient (Abstract; figs. 1, 2, 4 and 10-14);

a programmable processor responsive to selected ventilation parameters for controlling the respirator to ventilate the patient (Abstract; fig. 1; *processors 22 and 30*);

a memory connected to the processor for storing a plurality of ventilation parameters (Abstract; fig. 2; col. 8, lines 20-29; col. 9, lines 41-48);

a display for displaying the plurality of ventilation parameters, including ventilation parameters currently used by the processor to control the respirator and a plurality of proposed ventilation parameters (figs. 1, 4-8 and 12; col. 9, line 41 through col. 10, line 10);

input means cooperating with the memory and the display for selecting one of the proposed ventilation parameters from the plurality of proposed ventilation parameters and for assigning values to the selected proposed ventilation parameter, the selected value being displayed by the display (figs. 4-8 and 12; col. 9, line 41 through col. 10, line 10; col. 11, lines 15-17 and 21-29; col. 11, lines 10-30; col. 13, line 8 through col. 14, line 27);

wherein one, or more than one of the proposed ventilator parameters may be selected in any order and values assigned to one, or more than one of the proposed ventilator parameters while the processor controls the ventilator using the currently used values of the ventilation parameters (col. 11, lines 15-30; col. 13, lines 8-24); and

wherein a user accepts the one or more assigned values of the proposed ventilator parameters by pressing a button and the processor stores the assigned proposed ventilator values in the memory, and controls the ventilator using the newly stored values (col. 11, lines 15-30; col. 13, lines 8-24).

As per claim 2, Gilmore teaches a ventilator system for ventilating a patient wherein the display further comprises a graphical representation of a breath cycle (figs. 4, 5 and 12).

As per claim 5, Gilmore teaches a ventilator system for ventilating a patient comprising a plurality of sensors connected to the processor for providing signals to the processor representing the status of the ventilation of the patient (figs. 1, 4, 5 and 12; col. 8, line 62 through col. 9, line 8; col. 10, lines 11-41; col. 20, lines 15-23).

As per claim 6, Gilmore teaches a ventilator system for ventilating a patient wherein the processor is responsive to a signal from a selected one of the plurality of sensors indicating that a patient is connected to the ventilator (figs. 1, 4-8 and 12; *sensors pick up patient's respiratory data to be displayed*).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmore et al. ("Gilmore") in view of Lachmann et al. ("Lachmann").

As per claim 3, although Gilmore teaches a ventilator system for ventilating a patient wherein the breath cycle comprises a time scale, an inspiration indicator and an expiration indicator, the length of the inspiration bar and the expiration bar being a function of the ventilator settings currently used by the processor to control the ventilator (col. 11, line 34 through col. 12, line 48; col. 18, lines 24-37), Gilmore does not explicitly disclose inspiration indicators to be in the form of bars. Lachmann teaches a ventilator system for ventilating a patient (Abstract) wherein inspiration and expiration indicators are in the form of bars (figs. 6, 9 and 11; col. 10, lines 45-47). Therefore, it would have been obvious to an artisan at the time of the invention to include Lachmann's teaching of inspiration and expiration indicators being in the form of bars to Gilmore's teaching of

inspiration and expiration indicators being in the form of wedges in order to provide users with an implementation preference.

As per claim 4, although Gilmore teaches a ventilator system for ventilating a patient wherein the breath cycle comprises a time scale, an inspiration bar and an expiration bar, the length of the inspiration bar and the expiration bar being a function of the assigned values of the proposed ventilator settings (col. 11, line 34 through col. 12, line 48; col. 18, lines 24-37), Gilmore does not explicitly disclose inspiration indicators to be in the form of bars. Lachmann teaches a ventilator system for ventilating a patient (Abstract) wherein inspiration and expiration indicators are in the form of bars (figs. 6, 9 and 11; col. 10, lines 45-47). Therefore, it would have been obvious to an artisan at the time of the invention to include Lachmann's teaching of inspiration and expiration indicators being in the form of bars to Gilmore's teaching of inspiration and expiration indicators being in the form of wedges in order to provide users with an implementation preference.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Biondi et al. (US 6,668,829 B2 B1) teach a system for automatically weaning a patient from a ventilator, and method thereof.

Biondi et al. (US 6,584,973 B1) teach a ventilator control system and method.

Berthon-Jones (US 6,532,957) teaches an assisted ventilation to match patient respiratory need.

Schubert et al. (US 5,678,539) teach a respirator with an input and output unit.

Servidio (US 6,305,372 B1) teaches a pressure support ventilatory assist system.

Servidio et al. (US 5,598,838) teach a pressure support ventilatory assist system.

Halpern et al. (US 5,107,831) teach a ventilator control system using sensed inspiratory flow rate.

Anderson et al. (US 5,452,714) teach human lung ventilator system.

Press et al. (US 5,398,676) teach a portable emergency respirator.

Elghazzawi (US 5,685,318) teaches a method an apparatus for detecting quick movement artifact in impedance respiration signals.

### ***Inquires***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lê Nguyen whose telephone number is **(571) 272-4068**. The examiner can normally be reached on Monday - Friday from 7:00 am to 3:30 pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (703) 308-0640.

The fax numbers for the organization where this application or proceeding is assigned are as follows:

(703) 872-9306 [Official Communication]

Art Unit: 2174

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

LVN  
Patent Examiner  
October 27, 2004

*Kristine Kincaid*  
KRISTINE KINCAID  
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TECHNOLOGY CENTER 2100